

NICOLA T. HANNA
United States Attorney
PATRICK R. FITZGERALD
Assistant United States Attorney
Chief, National Security Division
GEORGE E. PENCE (Cal. Bar No. 257595)
DAVID T. RYAN (Cal. Bar No. 295785)
Assistant United States Attorney
Terrorism and Export Crimes Section
1500 United States Courthouse
312 North Spring Street
Los Angeles, California 90012
Telephone: (213) 894-2253/4491
Facsimile: (213) 894-2979
E-mail: george.pence@usdoj.gov
david.ryan@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TYLER LAUBE,

Defendant.

No. CR 18-00759-CJC-4

OPPOSITION TO DEFENDANT TYLER
LAUBE'S MOTION TO WITHDRAW GUILTY
PLEA AND DISMISS INDICTMENT

Plaintiff United States of America, by and through its counsel
of record, the United States Attorney for the Central District of
California and the undersigned Assistant United States Attorneys,
hereby files its Opposition to Defendant Tyler Laube's Motion to
Withdraw Guilty Plea and Dismiss Indictment.

//

//

1 This Opposition is based upon the attached memorandum of points
2 and authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4 Dated: June 7, 2019

Respectfully submitted,

5 NICOLA T. HANNA
6 United States Attorney

7 PATRICK R. FITZGERALD
8 Assistant United States Attorney
 Chief, National Security Division

9 _____
 /s/

10 GEORGE E. PENCE

11 DAVID T. RYAN

Assistant United States Attorneys

12 Attorneys for Plaintiff
13 UNITED STATES OF AMERICA
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 On November 20, 2019, defendant Tyler Laube pleaded guilty
3 pursuant to a plea agreement to conspiracy to violate the Anti-Riot
4 Act. In his plea agreement, Defendant Laube admitted that he
5 attended a Rise Above Movement ("RAM") combat training to prepare to
6 engage in violent confrontations with protestors and other
7 individuals at political rallies, and that he and several RAM members
8 then assaulted protestors and other persons at a political rally in
9 Huntington Beach, California. (Dkt. 59 at 4-5.)

10 Defendant Laube now moves to withdraw his guilty plea and
11 dismiss the Indictment in light of the Court's Order granting his co-
12 defendants' Joint Motion to Dismiss the Indictment on the basis that
13 the Anti-Riot Act is facially overbroad in violation of the First
14 Amendment (the "Joint Motion"). (Dkt. 145.) "A defendant may
15 withdraw a guilty plea after a district court accepts the plea but
16 before sentencing if 'the defendant can show a fair and just reason
17 for requesting the withdrawal.'" United States v. Ortega-Ascanio,
18 376 F.3d 879, 883 (9th Cir. 2004) (quoting Fed. R. Crim. P.
19 11(d)(2)(B)). Although this standard "is applied liberally," it is
20 clear that "defendant has the burden to show a fair and just reason
21 for withdrawal of a plea." Id.

22 The Indictment alleges that defendant Laube and co-defendants
23 Robert Rundo, Robert Boman, and Aaron Eason conspired to violate the
24 Anti-Riot Act, in violation of 18 U.S.C. § 371. Specifically, the
25 Indictment alleges that (1) defendants Rundo, Boman, and Eason
26 recruited members to join RAM, which they represented as a combat-
27 ready, militant group of a new nationalist white supremacy and
28 identity movement, (2) defendants Rundo, Boman, and Eason coordinated

1 hand-to-hand and other combat training among RAM members and
2 associates to prepare to engage in violence at political rallies,
3 (3) defendant Laube attended at least one such training event for
4 that purpose, and (4) defendants Laube, Rundo, Boman, and Eason then
5 attacked attendees, protestors, and other persons at political
6 rallies. In furtherance of their conspiracy and as evidence of their
7 agreement to engage in this violent conduct, the Indictment also
8 alleged that defendants shared videos and photographs of themselves
9 committing acts of violence at political rallies to recruit members
10 for future events.

11 On November 20, 2018, defendant Laube pleaded guilty pursuant to
12 a signed Plea Agreement. Both in his Plea Agreement, and during his
13 Rule 11 colloquy with the Court, defendant Laube admitted that he
14 conspired to commit acts of violence at political rallies and
15 actually committed violent assaults at one such rally. The Plea
16 Agreement set forth the factual basis for his guilty plea:

17 Between January and April 2017, defendant associated with
18 individuals involved in an organization originally known as
19 the "DIY Division," that was later re-branded as the "Rise
20 Above Movement" or "RAM." RAM represented itself as a
21 combat-ready, militant group of a new nationalist white
22 supremacy and identity movement. RAM regularly held hand-
23 to-hand and other combat training for RAM members and
associates to prepare to engage in violent confrontations
with protestors and other individuals at political rallies.
RAM leaders organized the training sessions and attendance
at political rallies through phone calls and text messages.
On March 15, 2017, defendant attended one such combat
training event in San Clemente California.

24 On March 25, 2017, defendant attended a political rally in
25 Huntington Beach, California along with several RAM
26 members. At that event, defendant and several RAM members
27 assaulted protestors and other persons. Following that
28 rally, RAM members used the Internet to post photographs
and videos of assaults committed by defendant and other RAM
members in order to recruit members to engage in violent
confrontations at future events.

1 (Dkt. 59 at 4-6.)

2 In its Order granting the Joint Motion, the Court held that the
3 Anti-Riot Act is overbroad under the First Amendment because it
4 "criminalizes advocacy even where violence or lawless action is not
5 imminent." (Dkt. 145 at 7.) As defendant Laube's Statement of Facts
6 makes clear, however, he did not plead guilty to conspiring to
7 violate the Anti-Riot Act by advocating violence, imminent or
8 otherwise. Nor did he plead guilty to conspiring to encourage,
9 promote, urge, or instigate others to riot. See 18 U.S.C.
10 § 2101(a)(2). Along with his co-defendants, he personally prepared
11 to commit violent assaults at riots, and then he committed violent
12 assaults. Accordingly, he pleaded guilty to a conspiracy to use
13 facilities of interstate commerce and take overt acts for the purpose
14 of participating in, carrying on, and committing acts of violence in
15 furtherance of riots. See 18 U.S.C. § 2101(A)(2), (3). Those
16 provisions of the Anti-Riot Act, which proscribe conduct committed
17 for the purpose of engaging in violence at riots, do not prohibit a
18 substantial amount of protected expression.

19 For these reasons, as well as the reasons set forth in the
20 government's opposition to the Joint Motion (Dkt. 137), and at the
21 June 3, 2019 hearing on that motion, the Anti-Riot Act, and in
22 particular the provisions of the Act on which this case is based, are
23 not overbroad under the First Amendment. Accordingly, the government
24 respectfully requests that the Court deny defendant Laube's Motion to
25 Withdraw Guilty Plea and Dismiss Indictment.